ascertain the existence of an unexploded charge. *Carlson* v. *James Forrestal Co.* (1907), — Minn. —, 112 N. W. Rep. 626.

It is interesting to compare this case with that of *Peters et al.* v. *George* (1907), — C. C. A. (3rd Cir.) —, 154 Fed. 634 (6 MICH. LAW REV. 181). The latter case was decided in the federal court May 13, 1907, while the present case was decided July 5, 1907. The facts are practically identical in both cases. A common laborer was ordered by his foreman to dig out an unexploded charge of dynamite from a hole drilled in the rock, and received permanent injuries in so doing. Both cases arrived at the same result; in each the employer is held liable. The lines of reason, also, although nominally different, are brought very close together. The Minnesota case follows the vice-principal rule. Judge ELLIOTT says, "Thomas (i. e., the foreman) was a vice-principal and not a fellow-servant; if he failed to perform the absolute duty to exercise proper care to furnish a reasonably safe place for the employees to work, the master is responsible for the damages resulting thereby." Judge GRAY, in the federal case, after noting that much argumentation had been devoted as to whether the foreman was a vice-principal or a fellow-servant, says as follows: "While at one time the so-called theory of vice-principal was much resorted to in working out the liability of a master for injuries to an employee incurred in his service, it has, subsequently to the decision of the *Ross case,* 112 U. S. 377, been largely discarded, at least in the federal courts * * *. Therefore, in the language of the opinion just referred to [i. e., Justice BREWER, in *B. & O. R. R. Co.* v. *Baugh,* 149 U. S. Rep. 368], it will be seen that the question turns rather on the character of the act than on the relation of the employees to each other." The reasoning of these two cases is certainly very closely allied. Perhaps the idea suggested by Professor Kales in his article on *"The Fellow-Servant Doctrine in the United States Supreme Court,"* 2 MICH. LAW REV. 79 (Nov., 1903), is working its way into the state courts, and they are also approaching the whole matter from the point of view of the master's legal duty.

MASTER AND SERVANT—TORTS OF SERVANT—LIABILITY OF OWNER OF AUTOMOBILE FOR CHAUFFEUR'S NEGLIGENCE.—The defendant, while on a business trip in an automobile, made his headquarters at a hotel, the automobile being kept in a garage several blocks away. On the evening of the accident, on arriving at the hotel, the defendant, after telling the chauffeur that he was going out in the machine that night, directed him to go down stairs in the hotel and get oil. Instead of obeying this instruction literally the chauffeur drove the automobile to the garage for the oil, and while on his way there the collision occurred. *Held,* that whether the chauffeur was acting within the general scope of his authority was properly submitted to the jury, although in this particular instance the use of the machine was in disobedience of the literal instruction of the master. *Bennett* v. *Busch* (1907), — N. J. L. —, 67 Atl. Rep. 188.

Cases concerning the relation existing between a chauffeur and his employer are becoming of more frequent occurrence with the growing use of the automobile. The rule is universally accepted that the master is respon-

sible for any injury resulting from the negligence of the servant while driving the master's *carriage,* provided the servant is at the time engaged in his master's business. 20 AM. & ENG. ENCY. OF LAW, 165, and cases cited: SMITH ON MASTER AND SERVANT, p. 283; SCHOULER ON DOMESTIC RELATIONS, p. 636. And the principle is also well settled that the master is not relieved from liability by reason of the fact that the act resulting in injury was done in disobedience of his express orders, because the test of the master's responsibility for the acts of his servants is not whether such act was done in accordance with the instructions of the master to the servant, but whether it was done in the prosecution of the business that the servant was employed to do. 20 AM. & ENG. ENCY. OF LAW, 167, and cases cited. In this case the court, although admitting that whether the act of the driver was within the scope of his employment and in the execution of his master's orders was a matter of doubtful inference, nevertheless called attention to the fact that the chauffeur was drawing twenty dollars a week salary and was in a class superior to that of the ordinary coachman. To quote the words of the opinion: "It is easy to understand how a master might order certain classes of servants to perform an act and expect exact obedience; but in directing a man of the intelligence and responsibility of Harse about such a trifling matter it was in all probability in the nature of a suggestion merely." It would seem that the conclusion to be drawn from the case was that the court considered that owners of automobiles must be held to a stricter accountability for the acts of their chauffeurs than have been owners of horses for the negligence of their coachmen.

NAVIGABLE WATERS—JURISDICTION OF THE UNITED STATES.—An order to show cause why a preliminary injunction should not issue was obtained by the plaintiff in a suit brought by the United States to compel the removal of certain obstructions erected in the inlet connecting the Bay of Far Rockaway, on the southern coast of Long Island, with the Atlantic Ocean, the principal question at issue being whether or not such bay is at the present time navigable water within the jurisdiction of the United States. *Held,* as it appears that such bay has been navigable water, until recently at least, and that an obstruction, if made, would have a tendency to change its character as such by preventing the ebb and flow of the tide therein, an injunction pendente lite should issue. *United States* v. *Banister Realty Co. et al.* (1907), — C. C. E. D., N. Y. —, 155 Fed. Rep. 583.

The value of this case lies chiefly in the comprehensive discussion indulged in by the court, concerning the jurisdiction of the United States over navigable waters. This jurisdiction is conferred on the federal government by two grants in the Constitution of the United States, relating to admiralty and maritime jurisdiction, and to interstate commerce. From each of these two grants there has developed a line of decisions on the jurisdiction of the United States over navigable waters. Under the power to regulate commerce, the United States Supreme Court held in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.,* 18 How. 421, "the regulation of commerce includes intercourse and navigation." *The Hazel Kirke,* 25 Fed. 601; *King* v. *American*